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In re Application of	:	OFFICE OF PETITIONS
Suzumura et al.	:	
Application No. 10/689,613	:	DECISION DISMISSING
Filed: 22 October, 2003	:	PETITION
Atty Docket No. 032218-018	:	

This is a decision on the petition filed on 28 September, 2004, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed Application No. 09/783,992, filed on 16 February, 2001.

The petition is **DISMISSED AS MOOT**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;¹

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on 22 October, 2003, and was pending at the time of filing of the instant petition.

The current procedure where a claim for priority under 37 CFR 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(3).²

In the instant case, the Office recognized the claim for benefit of the prior-filed nonprovisional application, No. 09/783,992, which appeared on the transmittal letter for the instant application. Further, Office PALM records indicate that this application was published on 29 April, 2004, including the claim to benefit of the instant prior-filed nonprovisional application. In view thereof, a petition under 37 CFR 1.78(a)(3) is unnecessary.

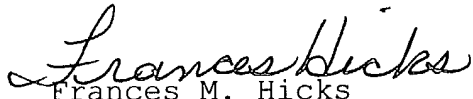
The petition fee of \$1,330.00 will be credited to counsel's deposit account, No. 02-4800, in accordance with the present petition.

Any questions concerning this decision on petition may be directed to Senior Petitions Attorney Douglas I. Wood at 571.272.3231. All other inquiries concerning either the

²Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

examination process or status of the application should be directed to the Technology Center.

The application is being referred to Technology Center AU 3725 for further processing.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances M. Hicks
Lead Paralegal
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy